THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.22843 OF 2006

DATED: 24-07-2007

BETWEEN

B. Srininvasulu @ Srinivasa Rao,
S/o. Late B. Prasada Rao,
Occ: Business, R/o.10-4-12/1,
Mammilagudem, Khammam.

...PETITIONER

AND

Sub-Inspector of Police,
Abids Police Station.
Hyderabad and others.

...RESPONDENTS

ORDER:

Petitioner seeks a Writ of Mandamus to declare the action of the respondents 1 and 2 in not investigating and in not filing charge sheet in Cr.No.222 of 2004 of Abids Police Station, Hyderabad, registered against the unofficial respondents 4 to 8 as illegal and arbitrary.

2. Learned counsel for the petitioner submits that the fourth respondent is the mother and respondents 5 to7 are the sisters of the petitioner. He further submits that the petitioner, late father of the petitioner, grandmother of the petitioner and respondents 4 to 7 had a registered partnership firm and later stated a cinema theatre in the name of Srinivasa Theatre at Wyra and they have taken loan of Rs.3,50,000/- from the State Bank of Hyderabad, Wyra branch and executed documents creating encumbrance in favour of the bank.

He further submits that the bank issued notices for repayment of loan, as they could not repay the loan, the bank filed a suit in O.S.No.25 of 1990 on the file of the Subordinate Judge, Sathupally for recovery of an amount of Rs.5,93,254/-, in which, later a receiver was appointed to sell the theatre and realize the amount, accordingly an amount of Rs.66,41,565/- was received as sale proceeds. Thereafter, the said case was transferred to the Debts Recovery Tribunal (DRT), Hyderabad on the point of jurisdiction.

3. Learned counsel for the petitioner further submits that the bank was entitled for a sum of Rs.43,25,755/- and the balance amount of Rs.23,15,810/- was lying in DRT. In that connection, the eighth respondent filed a vakalat on behalf of the respondents 4 to 7 and also on behalf of the petitioner, though the petitioner had not signed the vakalat engaging the eighth respondent as his advocate before DRT. Based on a memo filed by the eighth respondent stating that the firm is not in existence and there is no dispute between the partners and an undertaking given by the fourth respondent that the claims have been settled and payments have been made, DRT issued a cheque for Rs.23,15,810/- in favour of the fourth respondent directing her to pay the said amount to all the partners. He further submits that subsequently the fourth respondent presented the cheque in the bank, withdrew the amount and misappropriated the same, without making payment to the petitioner. In that connection, the petitioner made a report before the Station House Officer, Abids Police Station on 31.05.2004 against the respondents 4 to 8 about forgery of his signatures by them on the vakalat filed before DRT in relation to withdrawal of the said amount and with regard to the filing of the memo. Based on the said complaint the first respondent registered a case in Cr.No.222 of 2004 under Sections 403, 468, 471 and 420 of the Indian Penal Code, 1860 on 02.06.2006. The grievance of the petitioner is that the respondents 1 and 2 have neither completed the investigation nor filed a charge sheet in the aforesaid crime.

4. Counter has been filed by the second respondent on 22.11.2006

stating that the Investigating Officer has collected the signatures of the complainant/petitioner and contacted Forensic Science Laboratory for taking handwriting expert's opinion, the FSL authorities have informed that the admitted signatures and handwritings of the petitioner are to be collected, therefore, the Investigating Officer requested the petitioner to produce the admitted signatures/handwritings for comparison of his signature but the petitioner failed to produce any evidence and did not furnish any document, therefore, a notice under Section 91/160 of the Code of Criminal Procedure, 1973 was issued to the petitioner on 22.03.2005 for producing the evidence, but he failed to produced any evidence.

It is stated that in spite of the efforts made by the respondents 1 and 2 to obtain the required information and material, the petitioner did not cooperate with them. It is further stated that the petitioner himself did not evince any interest in cooperating with the Investigating Officer to complete the investigation and that there is no truth in any of the allegations about collusion of the respondents 1 and 2 with unofficial respondents 4 to 8.

5. Pursuant to the directions of this Court to the police to complete investigation and take appropriate action, the Commissioner of Police/first respondent filed a counter on 18.06.2007 stating that the petitioner himself did not cooperate in furnishing the required material to prove his admitted signatures and handwritings for comparison by the handwriting expert. It is further stated that according to the allegations, the suit in O.S.No.225 of 1990 filed by the bank on the file of the Senior Civil Judge, Sathupally was transferred to DRT and numbered as O.A.No.225 of 2003 and the mother of the petitioner, the managing partner, filed an application in I.A.No.360 of 2004 in O.A.No.225 of 2003 for releasing excess amount and accordingly, DRT issued a cheque dated 02.04.2004 for a sum of Rs.23,15,810/-.

It is further stated that the petitioner alleges that the vakalat filed before DRT on his behalf has been forged and that he filed a petition in I.A.No.494 of 2004 in O.S.No.72 of 1989 complaining that his signature on the vakalat has been

forged, but the same was dismissed. It is stated that the records reveal that with regard to forgery of his signatures on the vakalat, the petitioner filed a petition in M.A.No.121 of 2005 in O.A.No.225 of 2003, which is pending on the file of DRT and the Investigating Officer filed a petition before DRT to handover the vakalat filed in O.A.No.225 of 2003 by contacting the Registrar, DRT, for providing the document but the Registrar declined to hand over the said document on the ground that an enquiry is pending before DRT.

It is further stated that as the petitioner himself did not cooperate with the police to complete the investigation, the Investigating Officer after obtaining permission from the Assistant Commissioner of Police, Abids Division, Hyderabad on 28.05.2007 referred the complaint of the petitioner as 'Lack of Evidence' and accordingly, after serving the notice, final report was also filed before the IV Metropolitan Magistrate, Nampally, Hyderabad on 16.06.2007 vide Sr.No.5461 of 2007. Thus, it is the case of the respondents that they have conducted investigation without any negligence on their part while discharging their official duties and after completion of investigation the complaint was referred as lack of evidence and final report was also filed before the concerned Court.

6. Learned counsel for the petitioner submits that there are no bonafides on the part of the respondents 1 to 3 with regard to the way in which the investigation was completed and final report was filed, therefore, the petitioner seeks to declare their action as illegal and arbitrary.

7. On the other hand, the learned Government Pleader for Home appearing for respondents 1 to 3 submits that once the final report is filed it is for the complainant either to file a protest application or to file a complaint before the concerned criminal Court. It is stated that the prayer in the writ petition is only to direct the respondents 1 and 2 to complete the investigation and file charge sheet; when the investigation is completed and final report has been filed, the petitioner is not entitled to any relief further in the writ

petition.

It is further stated that if the final report is illegal and arbitrary and if there is no lack of evidence, it is for the petitioner to contest the said report before the concerned criminal Court or to file a private complaint before the concerned Magistrate but the said disputed questions of fact cannot be decided in a writ petition. It is further stated that, in fact, during the course of judicial proceedings,

the alleged offence is said to have been committed and the petitioner has made an allegation that his signature on the vakalat has been forged, therefore, it is not open for the petitioner to file a complaint as it is for the concerned Court to conduct an enquiry as contemplated under Section 340(1) Code of Criminal Procedure, 1973, with regard to forgery of document produced before the Court under Section 195(1)(b)(ii) Cr.P.C.

It is further stated that under Section 195(1)(b)(ii) Cr.P.C. for any offence described in Sections 463 or punishable under Sections 471, 475 and 476 IPC when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, the criminal Court cannot take cognizance but under Section 340(1) Cr.P.C. upon an application made in the Court in which a forged document has been filed and if that Court is of the opinion that in the interest of justice an enquiry is required to be made in respect of the document produced or given in evidence in a proceeding in that Court, such Court may after such preliminary enquiry, record a finding to that effect, make a complaint thereof in writing and send it to a Magistrate of the first class having jurisdiction. Thus, it is the case of the learned Government Pleader that even according to the allegations, the vakalat has been forged and filed before DRT during the pendency of OA, therefore, the complaint filed before the police is not maintainable.

8. I am not inclined to express any opinion with regard to the said contention as admittedly an enquiry is pending before DRT. If the enquiry is

pending with regard to forgery of said document, it is for the DRT to initiate action under Section 340(1) Cr.P.C. and if the said document was not forged during the pendency of OA before DRT and

if the forgery is independent and not as contemplated under Section 195(1)(b)(ii) Cr.P.C. it is always open for the petitioner to file a protest application or approach the criminal Court by filing a private complaint. In view of the aforesaid effective remedies available to the petitioner and as already a final report has been filed, I am of the opinion that whether the petitioner has not cooperated in completing the investigation which led to filing of final report as lack of evidence and whether the said complaint is maintainable or not in view of Section 195(1)(b)(ii) Cr.P.C, being disputed questions of fact, as there is no specific evidence on record that goes to show that whether the said vakalat has been forged and filed before DRT during pendency of OA or not, cannot be decided in a writ petition.

The writ petition is accordingly dismissed. There shall be no order as to costs.

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V. ESWARAIAH, J

July 24th, 2007
DSK

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